UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Southern LNG Inc.	Docket Nos. CP02-379-000, CP02-379-001, CP02-380-000, CP02-380-001

ORDER AUTHORIZING EXPANSION, DENYING PROTEST, AND ADDRESSING REQUESTS FOR REHEARING AND CLARIFICATION

(Issued April 10, 2003)

1. On November 20, 2002, the Commission issued a preliminary determination in this proceeding addressing the non-environmental issues raised by the Southern LNG Inc. (Southern LNG) application to expand its existing liquified natural gas (LNG) import terminal on Elba Island, in Chatham County, Georgia, by adding a second and third docking berth, a fourth cyrogenic storage tank, and new piping, control, and sendout facilities.[1] The November 2002 order found that because expansion revenues were projected to exceed expansion costs, barring changed circumstances, it would be appropriate for Southern LNG to roll the proposed expansion's costs into its existing rate base in a future NGA Section 4 rate proceeding. Commission authorization of Southern LNG's proposed Elba Island expansion was reserved pending completion of an environmental review of the proposed project.

2. Marathon Oil Company (Marathon) filed a request for rehearing and clarification, and Southern LNG filed a request for rehearing of the November 2002 order. Point Fortin LNG Exports Ltd. (Port Fortin LNG) and BG LNG Train 3 Ltd. (BG LNG) submitted a protest in response to the November 2002 order. We deny Marathon's request for

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[1] 101 FERC ¶ 61,187 (2002), reaching a preliminary determination, based on an analysis of the non-environmental issues raised by Southern LNG's application, that the proposed expansion was consistent with the public interest.

rehearing, grant its requested clarification, grant Southern LNG's request for rehearing, and deny the protest, for the reasons discussed below. We analyze the environmental issues raised by the application and grant Southern LNG NGA Section 3 authority to expand its Elba Island facilities, subject to compliance with the environmental conditions contained as an appendix to this order. We find Southern LNG's proposed project to be consistent with the public interest because it will increase the potential flow of natural gas to supply underserved and/or unserved markets.

Background

3. Southern LNG operates an LNG facility on Elba Island, in Chatham County, Georgia, five miles downstream from Savannah, Georgia.[2] Southern LNG states the proposed expansion will enable it to increase the Elba Island facilities' working gas capacity from 4.0 billion cubic feet of gas equivalent (Bcfe) to 7.7 Bcfe, to increase the firm sendout rate from 446 million cubic feet per day (MMcf/d) to 806 MMcf/d, and to increase the maximum sendout rate from 675 MMcf/d to 1215 MMcf/d.

4. Southern LNG has entered into a precedent agreement with Shell NA LNG (Shell) for the full expansion capacity of 3.3 Bcfe under Southern LNG's currently effective Rate Schedule LNG-1. Southern LNG expects revenues from the service for Shell to exceed the expansion's expenses in each year of the 30-year service agreement. In the November 2002 order, we granted, subject to material changes in circumstances, Southern LNG's request a predetermination in favor of rolled-in rate treatment for the expansion costs in a future NGA Section 4 rate proceeding.

Protest

5. Point Fortin LNG and BG LNG, current LNG importers to Elba Island, filed a joint protest, questioning whether the proposed facilities will be adequate to handle both existing and expansion volumes.

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[2] In 2000, Southern LNG received Commission authorization to recommission and renovate its Elba Island LNG facilities, which had not been in service since the 1980s. 90 FERC ¶ 61,275 (2000).

Requests for Rehearing and Clarification

6. Southern LNG and Marathon filed requests seeking rehearing and clarification. Southern LNG submitted an answer to Marathon, to which Marathon in turn responded. Although our regulations prohibit answers to requests for rehearing, as well as answers to answers,[3] we may waive this rule for good cause. We do so in this case in order to provide information that clarifies the issues and aids us in our decision-making.

Southern LNG

7. The November 2002 order indicated that Southern LNG would have two years to complete its proposed Elba Island expansion. Southern LNG seeks rehearing to extend this to three years, indicating that a two-year time period would compress the proposed project's construction schedule and increase capital costs. In view of the extent of the proposed construction activities, we concur with Southern LNG's assessment that three years is an appropriate time frame, and we will modify the construction condition accordingly.

Marathon

8. Marathon argues against the proposed expansion, and if the project goes forward, argues against rolled-in rate treatment. Marathon holds a contract to supply LNG to El Paso Merchant Energy;[4] El Paso Merchant Energy is the only customer that Southern LNG currently serves. Marathon does not expect Southern LNG to be able to provide expansion service without degrading existing firm service, e.g., by increasing the likelihood for downstream bottlenecks to hinder the flow of regasified LNG to markets. Marathon adds that enhancements in reliability or flexibility, if realized, would be incidental to the primary purpose of the proposed project, which is to provide new service to a new customer. Marathon concludes that because the proposed expansion would adversely impact the existing customer, the proposal should be rejected as inconsistent with the Commission's

[3] 18 CFR § 385.213 (a)(2).

[4] Marathon's contract to supply LNG to El Paso Merchant Energy was recently acquired from Enron Americas LNG Company (Enron LNG) in the course of Enron LNG's bankruptcy proceeding. Southern LNG observes, and there is no evidence to the contrary in the record in this proceeding, that Marathon has yet to act under its recently acquired contract to effect LNG deliveries to El Paso Merchant Energy.

1999 Statement of Policy on the Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement on New Facilities).[5]

9. In the event the proposed project is approved, Marathon argues that Southern LNG's proposal to roll expansion costs into the existing rate base will result in El Paso Merchant Energy, as Southern LNG's sole existing customer, subsidizing the expansion customer Shell. Marathon maintains that rolled-in rate treatment will place companies providing the current customer with LNG supplies at a competitive disadvantage by forcing these LNG suppliers to subsidize LNG imports for expansion customers. Since Southern LNG did not submit an initial incremental rate reflecting the stand-alone cost of providing expansion service, Marathon argues that the Commission must calculate and compare the incremental rate with the rolled-in rate in order to determine the appropriate expansion rate treatment. Marathon asserts that in this case an incremental rate would be greater than the existing rate; consequently, rolling expansion costs into the existing rate base will increase the systemwide rate. Further, Marathon finds no record evidence that the proposed expansion will benefit either the existing customer or the public.

10. Marathon asserts the Commission erred in accepting Southern LNG's claim that expansion revenues will exceed expansion costs.[6] Marathon argues that Southern LNG has understated the proposed expansion's costs by failing to attribute a proper proportion of administrative and general (A&G) and operation and maintenance (O&M) expenses to its proposed expansion. Marathon further alleges that Southern LNG has employed a depreciation rate for expansion facilities that is approximately half the rate that Marathon believes should be applied. Correcting for what it contends are flawed assumptions in Southern LNG's Exhibit N cost-revenue study, Marathon calculates that rolling in expansion costs will result in a net increase in existing service charges, i.e., the existing customer will subsidize the expansion customer.[7] Marathon argues that rolling in expansion costs will cause the existing customer to become responsible for "a substantial portion" of the expansion's cost of service, without receiving any benefit in return.

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[5] 88 FERC ¶ 61,227 (1999), orders clarifying statement of policy, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094 (2000), order further clarifying statement of policy, 92 FERC ¶ 61,094 (2000).

[6] See Exhibit N of Southern LNG's Application, which projects expansion project expenses and revenues over 30 years.

[7] Marathon acknowledges that Southern LNG now incurs charges for tug and pilot services which may no longer be required when new docking berths are operational, but insists that there is nothing in the record that shows that Southern LNG's existing customer will realize any financial benefit from the elimination of these charges.

Marathon concludes that because the existing customer, El Paso Merchant Energy, will not benefit from the proposed expansion, rolled-in rate treatment is unwarranted. Marathon requests that the Commission require Southern LNG to submit a study that fully and accurately demonstrates the impact of rolling in expansion costs.

11. The Elba Island facilities can revaporize and send out gas at a firm rate of 446 MMcf/d and at a maximum rate of 675 MMcf/d. Currently, Elba Island's entire LNG storage capacity is available exclusively to serve El Paso Merchant Energy. The proposed expansion will enable Southern LNG to increase firm sendout capacity by 360 MMcf/d and maximum sendout capacity by 540 MMcf/d. Marathon speculates that although Southern LNG's existing sendout facilities are "more than adequate" to serve El Paso Merchant Energy, increasing revaporized volumes could cause takeaway capacity constraints.[8] Under Southern LNG's tariff,[9] takeaway capacity constraints would result in proportional, i.e., pro rata, curtailment, a result Marathon contends constitutes a degradation in existing service.[10] Marathon requests that on rehearing the Commission either require Southern LNG to demonstrate that post-expansion physical takeaway capacity will be sufficient to avoid any curtailment of El Paso Merchant Energy or else revise Southern LNG's tariff to eliminate the current pro rata allocation scheme to give

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[8] Marathon believes that capacity constraints could occur downstream of Elba Island. Marathon observes that regasified volumes are delivered at Elba Island into twin 30-inch diameter lines, which together have a capacity of 1,215 MMcf/d, significantly in excess of Elba Island's combined existing and expansion sendout capability of 806 MMcf/d. These twin lines, owned by Southern LNG's parent Southern Natural Gas Company (Southern Natural), extend for 13.25 miles, then deliver gas to third-party pipelines that have a total capacity that is less than that of the two 30-inch lines. Marathon expects transportation from this point on to result in "severe capacity constraints," such that "very little, if any, of the new gas supply to be imported to the Elba Island LNG Terminal will find its way to the market unless additional downstream capacity is built." Unless downstream capacity is increased, Marathon argues that the new LNG gas supplies "either will not be delivered or, if delivered, will simply displace existing supplies already being delivered into the interstate pipeline system from the Elba Island LNG Terminal." See Marathon's Request for Clarification and Rehearing, at 13-14 and 35 (December 18, 2002).

[9] See Southern LNG's tariff, General Terms and Conditions, Sections 8.4 and 12.5.

[10] Marathon notes that as a potential LNG supplier to the sole existing Elba Island customer, El Paso Merchant Energy, it stands to suffer if Southern LNG curtails the capacity now available to El Paso Merchant Energy.

priority to the existing customer in the event of takeaway constraints.

12. Southern LNG's tariff specifies that LNG deliveries have a maximum heat content of 1,075 Btu/scf. Ma rathon doubts that expansion LNG volumes will come in under this ceiling, stating that although current LNG suppliers have access to LNG sources with a relatively low Btu content, likely expansion LNG sources appear to have a heat content above 1,075 Btu/scf.[11] Thus, Marathon anticipates that Southern LNG will have to add Btu stabilization facilities at Elba Island in order to safely accept expansion LNG supplies. Marathon asserts these facilities' costs should be included as a necessary expansion expense. Marathon expects the resulting increase in the expansion's total cost will preclude rolled-in rate treatment.

13. Marathon stresses that the issue of how high-Btu LNG expansion volumes will be processed or blended to reduce the heat content should be resolved as a part of any Commission decision on Southern LNG's application, and should not be deferred until a later, separate proceeding. Marathon observes that in the 2001 order authorizing the recommissioning of the dormant Elba Island facilities, Southern LNG was permitted to waive compliance with its tariff provisions in order to accept LNG shipments with heat content above its tariff maximum of 1,075 Btu/scf, provided it did so on a non-discriminatory basis.[12] However, Marathon emphasizes that the waiver was subject to

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[11] Marathon references the potential LNG sources cited in Exhibit K of Southern LNG's Application.

[12] See 96 FERC ¶ 61,083 (2001), at 61,358, Ordering Paragraph (C)(4):

> Southern LNG shall not waive the maximum heat content specification of 1,075 Btu for receipt of a cargo of LNG as specified in its tariff until either:
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> (a) the capacity to reduce the heat content of imported LNG to 1,075 Btu is achieved through either: (i) construction and operation of additional Btu stabilization facilities at the Elba Island Terminal; or (ii) blending of LNG in Southern LNG's existing facilities or blending of vaporized LNG on Southern Natural's existing facilities including at the Del Webb Tap;
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> (b) the results of a study conducted by Southern LNG and acceptable to downstream shippers support the interchangeability of vaporized LNG exceeding 1,075 Btu with domestic pipeline gas; or
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> (c) other mitigation acceptable to downstream shippers.

(continued...)

certain conditions, e.g., the acquiescence of downstream shippers. Marathon requests that the same constraints on waiver imposed in the 2001 order be extended to cover expansion LNG shipments.

14. If the Commission is unpersuaded by Marathon's assertion that rolled-in rate treatment is unwarranted, Marathon alternatively asks the Commission to specify that Southern LNG can only request authorization to alter its rates in a general, not a limited, NGA Section 4 proceeding. Marathon further asks that in any such general rate proceeding, any party challenging rolling in expansion costs shall be deemed to have demonstrated changed circumstances if the party shows that the rolled-in rate results in an increase in the existing rate or, alternatively, shows that an incremental rate would exceed the currently-effective rate.

15. Marathon observes that Southern LNG is to make a rate filing three years after reactivation of its Elba Island operations to justify its existing storage rates.[13] Marathon further observes that Southern LNG submitted a request under NGA Section 4 to modify its rates, pursuant to a limited rate filing in Docket No. RP02-129-000, in which a settlement was approved.[14] Marathon requests that the Commission clarify whether this latter limited rate filing in Docket No. RP02-129-000 fulfilled the rate filing requirement that Southern LNG is required to make after three years of operation.

Southern LNG's Answer

16. Southern LNG urges the Commission to dismiss Marathon's request for rehearing on the grounds that Marathon does not meet the requirement of being a party "aggrieved by an order."[15] Southern LNG contends that Marathon should have presented its concerns in a protest to the application, and having failed to do so, should now be barred from submitting

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[12](...continued)
This condition does not obligate Southern LNG to waive the maximum heat content specification in its tariff or limit Southern LNG's discretion to attach conditions to any waivers granted. Southern LNG shall apply this discretion in a non-discriminatory manner.

See also 94 FERC ¶ 61,188 (2001), at 61,664-666, discussing this issue.

[13]90 FERC ¶ 61,297 (2002).

[14]101 FERC ¶ 61,009 (2002), letter order accepting uncontested settlement.

[15]15 USC § 717r(a).

what Southern LNG characterizes as an out-of-time protest stylized as a request for rehearing.

17. Southern LNG insists that its proposed expansion will enhance, not degrade, the quality of its existing service. As an example, Southern LNG cites the U.S. Coast Guard's observation that ships now dock at a berth that lies adjacent to the Savannah River navigation channel, whereas the proposed new marine slip will be set off from the flow of river traffic, outside of the river's navigation channel, which is expected to improve maritime safety and physical security. Southern LNG adds that the proposed new slip facilities will allow two ships to dock at the same time, with the existing single berth held in reserve, which will offer redundancy and flexibility, and thereby minimize delays and shipping conflicts.

18. Southern LNG finds Marathon's worry that there may be insufficient downstream capacity to accommodate increased LNG supplies to be premature, explaining that once new LNG imports are approved, market forces will ensure that downstream infrastructure will be added as needed. For example, Southern LNG observes that Southern Natural has recently obtained authorization to increase capacity downstream of Elba Island by 190 MMcf/d[16] and also has additional capacity available that it can acquire under firm contract. Further, Southern LNG notes that Southern Natural is currently seeking authorization to construct gas-fired power generation in the Savannah area, which should result in increased volumes of gas being delivered off Southern Natural's pipeline facilities immediately downstream of the Elba Island receipt point, thereby reducing the prospect of capacity constraints at Elba Island. Finally, Southern LNG states that neither the existing nor the expansion customer has been denied the opportunity to contract for available firm capacity on Southern Natural's downstream facilities.

19. Southern LNG does not dispute Marathon's observation that both its current and expansion customer could share pro rata reductions in the event of takeaway constraints. However, Southern LNG emphasizes that this outcome is consistent with its existing tariff and with Commission policy that firm service customers receive nondiscriminatory treatment. Southern LNG observes that neither El Paso Merchant Energy nor Shell have objected to the proposed expansion or to any risk it might pose to the prospective quality of service.

20. Southern LNG insists that because it has adequately supported its request for a predetermination favoring rolling in expansion costs, there is no reason for it to also submit documentation of the calculation of an incremental rate. Southern LNG reiterates

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[16] 100 FERC ¶ 61,284 (2002). Southern LNG is a wholly owned subsidiary of Southern Natural.

that the record shows that the proposed expansion's projected expenses will be less than the projected revenues for each of the first 30 years of service. Thus, Southern LNG contends that the Commission properly concluded that absent a significant change in circumstances, rolled-in rate treatment is warranted.

21. Southern LNG rejects Marathon's argument that expansion expenses are inappropriately allocated. Southern LNG maintains that its method of estimating A&G and O&M expansion expenses is based on its experience operating current Elba Island facilities and on a projection of directly assignable incremental costs. Where direct assignment proved impractical, Southern LNG states it has used the allocation methodology underlying its currently approved rates.

22. Southern LNG explains that it has included savings related to tug and pilot costs in its proposed expansion because new docking berths will eliminate these charges, and will thus provide a financial benefit for both existing and expansion customers. However, because these savings will be reflected in rates only after rolled-in rate treatment is approved in a future Section 4 proceeding, Southern LNG contends it is not appropriate to incorporate these savings in calculating net expansion income.

23. With respect to the 1.76 percent depreciation rate it has employed, Southern LNG states that this is the rate underlying its approved settlement for existing service.[17] Southern LNG argues that applying this existing rate is appropriate, because its expansion facilities will be operated on an integrated basis with its existing facilities.[18]

24. Southern LNG does not believe additional facilities will be necessary to enable it to handle high heat LNG expansion shipments. Consequently, Southern LNG rejects Marathon's contention that costs for the addition of gas treatment facilities should be included as an expansion expense. Southern LNG suggests that it may not need to construct new stabilization or processing facilities because another entity may do so. Southern LNG states that the terms of its precedent agreement require that LNG shipments delivered for Shell meet tariff specifications, unless Southern LNG agrees otherwise.[19] In addition, Southern LNG observes that Marathon is contractually obliged to pay costs incurred to

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[17] See 101 FERC ¶ 61,009 (2002).

[18] Citing Tennessee Gas Pipeline Company, 101 FERC ¶ 61,360, at 62,504 (2002) and Southern Natural, 94 FERC ¶ 61,297, at 62,088 (2001).

[19] Southern LNG's Application, Exhibit I, Appendix B.

accommodate LNG supplies with a high Bth content.[20] In view of these considerations, Southern LNG maintains that Marathon should not be permitted to attribute costs to the expansion that are the result of efforts undertaken to reduce Btu levels. Southern LNG further asserts that any consideration regarding how to account for costs of facilities that may never be built is premature, arguing this issue will only become relevant if it proposes to build additional facilities and to roll the new facilities' costs into its existing rate base.

25. Southern LNG opposes Marathon's request that the Commission declare that conditions imposed in conjunction with Elba Island's reactivation, specifying criteria that must be met before Southern LNG is permitted to waive compliance with its tariff's heat content provision,[21] be applied to expansion LNG shipments. Southern LNG contends that the waiver criteria were imposed in the reactivation proceeding in response to circumstances unique to the existing LNG deliveries, namely, the refusal of Marathon's predecessor in interest, Enron LNG, to absorb the cost of air or nitrogen injection facilities to reduce the heat content of its LNG shipments. Southern LNG explains that the Btu waiver criteria were imposed to appease downstream shippers, and emphasizes that no downstream shipper has expressed any concern with respect to the LNG supplies involved in this expansion proceeding. Southern LNG states that its current agreement with Shell, unlike the contract Marathon has obtained, includes a provision requiring that Shell's LNG shipments conform to the heat content standard specified in Southern LNG's tariff. In view of this, Southern LNG concludes there is no basis to make the prior waiver provisions applicable to expansion deliveries.

26. Marathon seeks assurance that the cost and revenue study that the Commission has directed Southern LNG to submit at the end of three years of Elba Island's operation remains a valid and pending requirement. Southern LNG states that it intends to submit the 3-year cost and revenue study as directed, and does not view this expansion proceeding as altering or amending the conditions of earlier, separate certificate and rate proceedings. Southern LNG replies to Marathon's request that the Commission clarify procedures that will apply in a future rate case, in particular which party will bear the burden of proof, by

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[20] Exhibit 6 of Southern LNG's Answer to Marathon Request for Rehearing presents the referenced contract, to which Marathon is successor in interest. The contract states that Southern LNG "shall not have any duty to install any additional equipment or modify any existing equipment in order to facilitate" its acceptance of LNG shipments and that Enron LNG (now Marathon), "will bear financial responsibility for and shall reimburse or directly fund . . . 100% of all incremental costs (both capital and operational) and liabilities (direct, indirect and consequential)" incurred by Southern LNG in connection with accepting LNG shipments that do not meet tariff specifications.

[21] See note 12.

arguing any such clarifying statements should be made in a separate generic policymaking or ratemaking proceeding.

Commission Response

Marathon's Standing to Request Rehearing

27. Southern LNG contends that because Marathon "had, or as a prudent purchaser of the Enron LNG contract should have, developed its views about Elba Island operations and the expansion well before the deadline for timely protests," Marathon should be barred from presenting views in a rehearing request of the November 2002 order that could have been put forth in a protest to Southern LNG's application. Further, Southern LNG claims that Marathon, as a potential LNG supplier to El Paso Merchant Energy, is in the same position and thus shares the same interests as Point Fortin LNG and BG LNG, current LNG suppliers to El Paso Merchant Energy, that submitted a joint protest which raised issues in common with those in Marathon's rehearing request. Southern LNG adds that Marathon merely holds an option to sell LNG to El Paso Merchant Energy, and therefore does not hold capacity rights to the Elba Island terminal or the right to service from Southern LNG. Southern LNG argues this as yet unexercised option to supply LNG to El Paso Merchant Energy does not constitute a recognizable interest in this proceeding, and suggests Marathon address its concerns to El Paso Merchant Energy rather than this Commission.

28. We will not dismiss Marathon's request rehearing, given that Marathon is a party to this proceeding and has financial interests that may be affected by the outcome of this proceeding. Specifically, Marathon explains that under the terms of the contract it acquired from Enron LNG, it is obligated to reimburse El Paso Merchant Energy for Elba Island terminalling costs incurred pursuant to Southern LNG's tariff. We accept Marathon's contention that because these costs include fixed terminalling charges that accrue regardless of whether LNG loads are delivered, it may be aggrieved if El Paso Merchant Energy is compelled to pay costs attributable to the proposed expansion or experiences a degradation in service attributable to the proposed expansion.

29. During the time to submit a protest to Southern LNG's proposed expansion application, a Marathon subsidiary, in the context of a then ongoing bankruptcy proceeding, was bidding for the right to an Enron LNG contract to sell LNG to El Paso Merchant Energy. Marathon's decision to become a party to this proceeding (by filing a timely, unopposed motion to intervene) was reasonable, anticipating that its subsidiary would be successful in obtaining the right to the Enron LNG contract, and that this LNG contract would be acquired by Marathon. However, since Marathon's subsidiary had not yet obtained the right to the supply contract, and had not yet transferred this contract

to Marathon, Marathon's failure to file a protest was not unreasonable.[22] Had the November 2002 order been our final order in this proceeding, rather than a preliminary determination, we might now find that the consideration of issues Marathon raises on rehearing could delay or disrupt this proceeding or prejudice a party to this proceeding. But that is not the case with respect to rehearing of the November 2002 preliminary determination; consequently, we find no rationale for precluding Marathon from submitting a rehearing request and no reason not to respond.[23]

Sufficiency of Proposed Expansion Facilities

30. Marathon claims the expansion proposal is effectively incomplete because it does not take into account additional facilities essential to handle the greater gas volumes. According to Marathon, additional and unaccounted expansion costs should include those associated with the construction of facilities downstream of Elba Island which Marathon maintains will be needed to receive and transport the increased volumes to be regasified at Elba Island as well as additional facilities at Elba Island which will be necessary to treat expansion LNG supplies to reduce excess Btu levels.

31. In our November 2002 order, we determined that the proposed project was properly designed to receive, regasify, store, and send out the projected LNG expansion volumes. We affirm this determination, as we find no evidence that facilities beyond those described in the application will be required in order for Southern LNG to provide the new services specified in the application. We recognize the possibility that accommodating new LNG deliveries may stress the Elba Island operating parameters, perhaps to the point that additional facilities to treat LNG supplies may be needed. At this time, however, such concerns are speculative. If Southern LNG does determine that it needs to undertake construction beyond that authorized herein, e.g., the installation of gas treatment facilities, it will have to initiate a separate proceeding for authorization to do so, and will remain responsible for costs incurred, until it obtains authorization to recover such costs in a future Section 4 rate proceeding. Marathon and other interested persons will have the

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[22] Typically, a person submitting a protest also submits a motion to intervene in order to become a party to a proceeding. However, being a party to a proceeding is not a prerequisite to a protest. Whereas any person can submit a protest, only persons demonstrating an interest which may be directly affected by the outcome of a proceeding, or an express right to intervene, or persons whose participation is in the public interest, are permitted to become parties to a proceeding. See 18 CFR §§ 385.211 and 385.214 (2002).

[23] We note that though other LNG suppliers submitted a protest expressing concerns similar to certain issues raised by Marathon, we do not believe this constitutes cause to bar Marathon from separately articulating its own objections.

opportunity to present comments in response to any subsequent requests by Southern LNG to add to its Elba Island facilities or to its rate base. Because we view the proposal before us in this proceeding as a stand-alone expansion, i.e., the proposed facilities are sufficient to provide the described new services, we find no need to consider now whether or how Southern LNG might later seek to add to its Elba Island terminal.

32. Marathon speculates that Southern LNG's proposed expansion will degrade existing service and questions the adequacy of supply commitments, tanker availability, and downstream capacity. As noted, as to the Elba Island terminal, we believe the record in this proceeding demonstrates that Southern LNG's proposal is properly designed to receive, regasify, store, and send out the projected expansion volumes. Further, we expect that upon authorization of Southern LNG's expansion, market forces will work to identify and alleviate any points of potential constraint in the chain from gas in the ground to ultimate consumption. We have already reached a determination that LNG supplies, which may originate from various countries, are adequate to meet domestic demands, and so anticipate no constraints attributable to LNG availability. We have also determined that Southern Natural pipelines have more than adequate capacity to receive existing and expansion volumes; thus, we anticipate no takeaway constraints leaving Elba Island. Further, while Marathon is correct that there may not currently be sufficient capacity on pipelines downstream of Southern Natural's twin 30-inch pipelines to accommodate the full output of existing and expansion volumes, that fact, as is discussed below, does not affect our determination that approval of the proposed project is in the public interest.

Terms and Conditions of Service

33. El Paso Merchant Energy does not oppose Southern LNG's proposal, but does ask that the Commission include provisions or conditions to ensure the reliability of and the integrity of the availability of existing service.[24] We believe that our authorization for the proposed expansion, as conditioned as discussed below, and in conjunction with the constraints and obligations set forth in Southern LNG's tariff, ensure that expanding the Elba Island facilities and services will not degrade the existing quality of service.

Potential for Curtailment under Southern LNG's tariff

34. Marathon correctly observes that Section 8.4 of the General Terms and Conditions of Southern LNG's tariff provides that in the event that a constraint in receipt, delivery, or working storage capacity occurs such that Southern LNG cannot meet the requirements of

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[24] El Paso Merchant Energy's Motion to Intervene, at 5 (June 28, 2002). El Paso Merchant Energy does not identify any specific provisions or conditions.

it customers, then the available capacity will be allocated first on a pro rata basis to each (expansion as well as current) firm customer. Marathon contends that since the vaporization and sendout capacity of the expanded Elba Island facilities exceeds the takeaway capacity currently available on facilities downstream of Southern Natural's twin 30-inch pipelines, approval of the expansion may result in a curtailment of El Paso Merchant Energy's ability to fully utilize its current level of capacity, thus adversely impacting an existing customer in contravention of the requirements of the Policy Statement. We disagree.

35. While not disputing Marathon's observation that both current and expansion customers might share in pro rata reductions in the event of takeaway capacity constraints, Southern LNG emphasizes that this is an existing tariff provision which is consistent with the Commission policy that all firm service customers receive nondiscriminatory treatment. El Paso Merchant Energy's service has always been subject to this condition and it is notable that neither El Paso Merchant Energy (the existing customer) nor Shell (the expansion customer) has objected to the proposed expansion or to any risk it may pose to the prospective quality of service.

36. Approval of the Southern LNG expansion does not decrease the amount of capacity currently available downstream of Southern Natural's twin 30-inch pipelines. Currently, El Paso Merchant Energy is able to nominate all the capacity from Southern LNG for which it is able to obtain downstream transportation. This should remain the case after construction of the expansion. That is to say, El Paso Merchant Energy's inability to receive its full entitlement of service from Southern Natural is likely to result, if at all, from its inability to obtain downstream transportation capacity, rather than from curtailment of service under the provisions of Southern Natural's tariff.[25] We have taken into consideration the recent downstream expansion and plans for gas-fueled electric generation facilities cited by Southern LNG. Those factors indicate that when this proposed expansion is placed in service three years from now, downstream interests will have had adequate time to respond

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[25] See Kern River Gas Transmission Company, 96 FERC ¶ 61,137 at 61,586-587 where the Commission found that the fact that there was inadequate take-way capacity on Southern California Gas Company (SoCalGas) downstream of Kern River's Wheeler Ridge delivery point and that the construction of additional capacity to Wheeler Ridge on Kern River might result in increased pro rata curtailments, did not warrant rejection of Kern River's proposed expansion because Kern River's existing shippers never had any assurance that all gas tendered to Kern River for delivery to Wheeler Ridge would be accepted by SoCalGas. Similarly here, El Paso Merchant Energy has no expectation that Southern LNG can deliver more vaporized LNG to a downstream shipper on its behalf than it has obtained capacity rights for on the downstream system.

to market forces and will have prepared to receive, transport, and consume expansion volumes.

Southern LNG's Waiver of its Tariff's Maximum Btu Provision

37. In its initial proposal to recommission Elba Island, Southern LNG anticipated adding Btu stabilization facilities to reduce LNG shipments' heat content. Southern LNG later revised this to omit the installation of any new Btu stabilization facilities, and instead proposed to blend higher heat LNG with lower Btu content gas in its facilities and in downstream pipelines. The Commission accepted this alternative, but in response to concerns raised by downstream shippers and Marathon's predecessor in interest, Enron LNG, imposed constraints on Southern LNG's ability to accept LNG deliveries with a heat content in excess of its tariff's stated maximum of 1,075 Btu.[26] Marathon asks the Commission to similarly constrain Southern LNG's ability to accept expansion LNG shipments that exceed the tariff's stated Btu limit.

38. Southern LNG sees no reason to extend the existing constraints to include expansion volumes, contending that the conditions governing waiving compliance with its tariff's Btu limit are a product of circumstances unique to existing LNG deliveries. Southern LNG explains that it was the refusal of Marathon's predecessor, Enron LNG, to absorb the cost of air or nitrogen injection facilities able to reduce the heat content of LNG shipments that necessitated the Btu waiver provision.

39. The waiver conditions were developed in response to concerns raised in the 2001 recommissioning proceeding, in particular downstream shippers' apprehension over the receipt of high heat gas. While the same concerns are not repeated in this expansion proceeding, we nevertheless find it prudent to continue to apply the same conditions to expansion LNG shipments. The waiver conditions are intended to ensure that issues regarding the treatment or transportation of non-conforming gas shipments, or the safety or operational integrity of the Elba Island or downstream facilities, or discrimination among LNG suppliers or shippers, do not arise. Given Shell's contractual commitment to import LNG that meets Southern LNG's tariff's Btu limit, we do not expect the waiver condition to impact Southern LNG's receipt of expansion LNG shipments.

40. If there is any indication that an LNG shipment fails to conform to any of Southern LNG tariff specifications – be it a delivery of existing or expansion volumes – and that Southern LNG has granted a waiver inappropriately, we can revisit this issue to consider whether operational restrictions are merited. Any person adversely impacted as a

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[26] 96 FERC ¶ 61,083 (2001).

consequence of Southern LNG's acceptance of a nonconforming LNG shipment may submit a complaint pursuant to Section 385.206 of our regulations.

Rate-Related Issues

Rolled-in Rate Treatment

41. Marathon takes issue with Southern LNG's derivation of its rolled-in rate proposal and faults Southern LNG for not also calculating an incremental rate. As a matter of rate-making methodology, if a company submits an expansion proposal that presents circumstances that favor a rolled-in rate, there is then no call to also calculate an incremental rate.

42. In our Policy Statement on New Facilities we address the issue of how to ensure that expansion rates embody proper price signals. Since placing existing customers in the position of subsidizing an expansion would send improper price signals, and thereby induce overbuilding and inefficient investment, the Commission will require incremental rates for expansion services in appropriate cases. However, incremental rates are not appropriate when inexpensive expansibility is made possible because of earlier, costly construction, since "the existing customers bear the cost of the earlier, more costly construction in their rates, [and] incremental pricing could result in the new customers receiving a subsidy from the existing customers because the new customers would not face the full cost of the construction that makes their new service possible."[27] In such cases, rolled-in rates are indicated.

43. In this case, the fact that the expected revenues of the proposed expansion will exceed its costs[28] reflects the expansion's reliance on earlier, costly construction

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[27] 88 FERC ¶ 61,227 at 61,746.

[28] In the November 20, 2002 preliminary determination, we concluded that annual revenues from the proposed expansion will exceed annual expenditures, that the estimated operating expense in the first year of service would be $22,077,921, while the estimated annual revenue for the first year of service would be $32,349,838. Further, we found that, adjusted for taxes and other items, the estimated net income in the first year of service would exceed estimated expenses in the first year of service, and would continue to do so in each of the 30 years of the term of Shell's service agreement. We concluded that the proposed expansion is financially viable without any contribution from the existing customers, and we accepted Southern LNG's claim that rolling expansion costs into its existing rate base would not result in existing customers subsidizing expansion services.

undertaken in the 1970s to establish the Elba Island terminal and since July 2001[29] to refurbish facilities and reestablish service at the dormant terminal. Consequently, employing an incremental rate for expansion service in this case would effectively oblige the existing customer to subsidize the expansion customer, a result that would conflict with our Policy Statement on New Facilities. We therefore find it appropriate to make a predetermination supporting a presumption that Southern LNG will be allowed to roll expansion costs into its existing rate base in a future rate case. There is no reason to require southern LNG to calculate and include an incremental rate as a part of this expansion proposal.

Cost Allocation

44. Marathon alleges that Southern LNG has made insufficient allocations of A&G and O&M expenses to the cost of the proposed expansion service. Marathon maintains that Commission policy and precedent direct that A&G expense be allocated between incremental and non-incremental services using the K-N method[30] but that until reliable records exist, the expense may be allocated on the basis of gross plant.[31] Southern LNG states that in assessing the financial impact of its proposed expansion, it has estimated expansion A&G and O&M expenses based on its experience operating the terminal and on a projection of directly assignable incremental costs, such as additional labor, contract services, spare parts, and consumable supplies. Southern LNG adds that where direct assignments were not possible, for example corporate headquarter overheads, it used the allocation methodology underlying its currently approved rates.

45. We find Southern LNG's approach to estimating expansion A&G and O&M expenses to be reasonable and to present no conflict with our policy and precedent. We find no inconsistency between the principle articulated in Northwest, i.e., directly assigning

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[29] See 96 FERC ¶ 61,083 (2001), authorizing Southern LNG's Elba Island's recommissioning.

[30] See Kansas-Nebraska Natural Gas Company, 53 FPC 1692, reh'g denied, 54 FPC 923 (1975), aff'd 534 F.2d 227 (10th Cir. 1976).

[31] Citing Northwest Pipeline Corporation (Northwest), 87 FERC ¶ 61,266 (1999), order on reh'g, 96 FERC ¶ 61,049 (2001) and referencing the no-subsidy policy set forth in the Policy Statement on New Facilities, 88 FERC ¶ 61,227, at 61,746 (1999). Marathon suggests costs be allocated based on the ratio of expansion project gross plant to total plant. Marathon calculates this to be 39.6 percent, and complains Southern LNG's Exhibit N demonstrates allocates an operating expense of only 13.0 percent to the expansion's costs.

O&M and other costs where possible, and Southern LNG's approach. Thus, for the reasons discussed herein and in our November 2001 order, we do not believe that the proposed rate treatment will result in the existing customer financially subsidizing the expansion customer.

46. Marathon objects to Southern LNG's subtracting current tug and pilot costs from the total cost of the proposed expansion as saved expense. Southern LNG contends that because tug and pilot costs can be eliminated if the proposed expansion goes forward, it is appropriate that the costs thereby saved be included as part of the system financial benefit that existing customers will share in after roll-in.

47. The U.S. Coast Guard mandates that Southern LNG station two tractor tugs and one conventional tug at Elba Island while LNG ships make use of the current dock. Presumably, this mandate would not apply to the comparatively sheltered location of the proposed new slip. Thus, use of the new slip will permit Southern LNG to eliminate tug and pilot costs. Based on this, we find it reasonable for Southern LNG to regard its post-expansion capability to forego tug and pilot costs as a savings to be treated as an overall system financial benefit shared by both existing and expansion customers.

Depreciation Rate

48. Marathon opposes Southern LNG's proposal to employ its currently effective depreciation rate of 1.76 percent for its proposed expansion facilities. As a general principle, we seek to ensure that the depreciation rate employed for an expansion project will not shift any new facility costs to existing customers, and we find the depreciation rate employed here to be consistent with this principle. In prior cases, we have permitted companies, in establishing an incremental rate, to use a systemwide depreciation schedule when expansion facilities will be operated as an integral part of an existing system.[32] In this case, not only will the new facilities be integrated into and operated as part of the existing Elba Island terminal, here the applicant seeks rolled in rate treatment and we have made a finding supporting such treatment. In view of this, we believe applying the existing facilities' depreciation rate to the expansion facilities to be appropriate.

NGA Section 4 Rate Proceeding

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[32] See Texas Eastern Transmission, LP,101 FERC ¶ 61,120 at 61,480 (2002) and Transcontinental Gas Pipe Line Corporation (Transco), 98 FERC ¶ 61,155, at 61,554 (2002).

49. Marathon requests that if Southern LNG seeks to alter its existing rates, the Commission require Southern LNG to do so in the context of a general, rather than limited, Section 4 rate proceeding. Marathon further requests that in any such general rate proceeding, any party challenging Southern LNG's roll-in proposal be deemed to have demonstrated changed material circumstances if (1) the result of the roll-in would raise the existing rates or (2) incremental rates would be greater than existing rates.

50. Our decision in this proceeding relies on what we know now and can reasonably expect concerning the proposed expansion's costs and revenues, and it is on this basis that we reach the conclusion that rolling in expansion costs will prove consistent with our Policy Statement on New Facilities. There will be opportunity to revisit the assumptions with respect to cost components and other features that underlie our presumption supporting roll-in rate approval in any future rate proceeding in which Southern LNG seeks to recover the costs of this expansion project. To the extent that Southern LNG, in a future rate proceeding, proposes any increase in costs that might affect the basis for this order's presumption supporting rolled-in rate treatment, Marathon and other interested parties will have the opportunity to challenge Southern LNG's proposed revised costs.[33] We find no reason to prescribe the type of rate case Southern LNG must present if it requests approval to roll-in the proposed expansion's costs.

Cost and Revenue Study

51. Marathon seeks assurance that the cost and revenue study that the Commission has directed Southern LNG to submit at the end of three years of Elba Island's operation remains a valid and pending requirement. Southern LNG states that it does not view this expansion proceeding as altering or amending the conditions of earlier, separate certificate and rate proceedings. We concur with Southern LNG and find that Southern LNG's limited rate filing in the Docket No. RP02-129-000 rate proceeding does not alter Southern LNG's outstanding obligation in the Docket No. CP99-580-000 certificate proceeding to file a cost and revenue study three years after the reopening of its Elba Island terminal. We note that this cost and revenue submission will be made well before the proposed expansion is placed in service.

Environmental Review

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[33] If Southern LNG's future Section 4 rate filing includes costs sufficiently different from the cost data filed in this proceeding that rolled-in treatment would increase its generally applicable rates, such a result would constitute a material change in circumstances rebutting this order's presumption. See, e.g., Southern LNG, 99 FERC ¶ 61,191, at 61,792-93 (2002).

52. On September 12, 2002, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Elba Island Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting (NOI). On February 5, 2003, the Commission issued a Notice of Availability of the Environmental Assessment for the Proposed Elba Island Expansion Project. Substantive issues raised in comments responding to the NOI are addressed in the Environmental Assessment (EA). The EA addresses geology, soils, water resources, wetlands, fisheries, dredging, vegetation, wildlife, federally listed threatened and endangered species, land use, socioeconomics, air quality, noise quality, cultural resources, reliability and safety, and alternatives. The EA was mailed to federal, state, and local government agencies; local libraries and newspapers; nearby residents and industry; and non-government organizations. Written comments on the EA were submitted by the National Marine Fisheries Service - Habitat Conservation Division (Fisheries), Synergistic Dynamics, Inc., Jody Lanier, CITGO Asphalt Refining Company (CARCO), Colonial Group, Inc. (Colonial), Marathon, Southern Alliance for Clean Energy (SACE), City of Savannah - Water and Sewer Bureau (CSWSB), Coastal Group Sierra Club (Sierra Club), and Savannah Maritime Association.

53. Southern LNG has submitted additional information to update the environmental record. On February 13, 2003, Southern LNG provided the Georgia State Historic Preservation Office's comments on the wetland mitigation area cultural resources survey report. Therefore, recommendation 10 of the EA is no longer required. On March 3, 2003, Southern LNG provided several permits and clearance letters, including: a January 24, 2003 U.S. Army Corps of Engineers (COE) permit; a November 6, 2003 Georgia Department of Natural Resources (GADNR) water quality certification; a January 6, 2003 coastal zone consistency determination for COE permit; a December 20, 2002 Georgia Coastal Marshlands Protection Committee permit; a February 17, 2003 GADNR air quality permit; a February 24, 2003 GADNR coastal zone consistency determination for air quality permit; and a February 20, 2003 Chatham County land disturbance activity permit. The January 6 and February 24, 2003 GADNR coastal zone consistency determinations complete review under the Coastal Zone Management Act. Therefore, recommendation 8 of the EA is no longer required.

Comments in Response to the EA

54. Synergistic Dynamics, Inc., comments that the proposed construction of docking berths away from the Savannah River's navigation channel all but eliminates concerns regarding collisions.

55. Marathon claims the environmental review was deficient as it did not include consideration of the need for Btu stabilization facilities. For the reasons discussed above, our analysis in this proceeding is limited to the facilities proposed in this application and

any additional facilities that Southern LNG may later add will be analyzed in a subsequent, separate proceeding.

56. SACE claims that the EA fails to clearly review whether various local, state, and federal permits were properly granted or will be in the future. Table 2.7-1 of the EA provides a list of permits and approvals and their status at the time the EA was printed. An update on the status of certain permits and approvals granted since appears above. Whether a permit or approval is or will be properly granted is the responsibility of the particular granting authority, as is the responsibility for ensuring that Southern LNG complies with all applicable conditions.

57. SACE believes that the full impacts on air quality are not analyzed in the EA, specifically emissions from LNG ships and particulate emissions. The GADNR Environmental Protection Division, Air Protection Branch (GEPD) has full permitting authority delegated by the U.S. Environmental Protection Agency (EPA). As described in the EA, GEPD states in its air permit for the previous Recommissioning and Sendout Modifications Projects that because Southern LNG "has no control over these numerous factors, emissions from the vessels should not be attributed to the Elba Island Terminal." On February 17, 2003, GEPD issued Southern LNG an Amendment to Air Quality Permit. The recent air permit is an amendment to Southern LNG's existing air permit and contains specific restrictions on particulate matter emissions. GEPD has not changed its policy of excluding LNG ship emissions from the terminal's emissions inventory. In addition, LNG vessels operate on LNG boiloff gas while in port, which is significantly cleaner burning than the more common bunker C used by other vessels.

58. CSWSB is concerned that dredging the berthing slip may expose relict sediment filled stream channels, or paleochannels, which may allow saltwater intrusion into the Floridian aquifer. This aquifer underlies much of coastal South Carolina, Georgia, and Florida and serves as a potable source of water to much of coastal Georgia and South Carolina. Saltwater intrusion into the aquifer would limit its use as a potable source of water. The COE considered impacts to the Floridan aquifer in its analysis and issued Southern LNG a dredging permit on January 24, 2003. The COE notes that CSWSB's comments do not provide any new information or concerns that they were not aware of at the time the analysis was completed for this project.

59. The Sierra Club questions the need for the proposed project. The Commission addressed this issue in our November 2002 preliminary determination, and we affirm our finding that Southern LNG has sufficiently documented a need for its proposed expansion. The Sierra Club refers to EA Section 3.1.1 - Geology, which states that "[t]here are no recognized faults in the Coastal Plain of Georgia that are associated with seismicity." The Sierra Club claims that "[t]o the contrary, earthquakes do occur in the coastal region to the

extent that they can be felt by coastal residents in Georgia and South Carolina." The discussion in the EA on Geologic Hazards takes into account earthquakes that were felt and caused damage in the Savannah area and the postulated epicenters. Southern LNG is required to construct, operate, and maintain the facilities in accordance with the U.S. Department of Transportation Federal Safety Standards for LNG Facilities.[34] The facilities will also meet the National Fire Protection Association (NFPA) Standards for the Production, Storage, and Handling of LNG (NFPA 59A). Section 4-1.3 of NFPA 59A contains specific seismic design requirements.

Dredging

60. Jody Lanier and SACE question what the COE dredging permit entails; what conclusion the COE drew concerning radioactive and other toxic contaminants in dredging material; how the public may obtain copies of the permit and other related COE documents; whether the EA indicates if a proper analysis of contaminants in the proposed dredged sediment was done; and whether the Commission has reviewed the final COE permit to verify its validity. As stated in our EA, the COE has jurisdiction over dredging. On January 23, 2003, the COE completed its Case Document and Environmental Assessment (CDEA) as part of its NEPA analysis prior to issuing a Department of the Army Permit for Southern LNG's application to dredge and construct a new berthing slip on Elba Island. The COE issued Southern LNG a dredging permit on January 24, 2003. We find no cause to question the issuance of that permit.

61. The COE's CDEA states that there are no contaminant related issues with regard to the sediments proposed to be dredged and placed in Elba Island's confined disposal facility. This determination is based on the COE Savannah District - Planning Division Environmental Branch's review of Southern LNG's April 10, 2002 report, "Exhibit C: Soil and Sediment Chemistry Evaluation, Southern LNG Expansion, Elba Island, Georgia." Additional information concerning the COE's CDEA and dredging permit for the proposed new slip can be obtained by contacting the Department of the Army, Savannah District Corps of Engineers, Savannah, Georgia. Given the COE's extensive experience on the subject of dredging in the Savannah River, Commission staff concurs with their assessment.

Environmental Assessment v. Environmental Impact Statement

62. Jody Lanier, SACE, and the Sierra Club argue an environmental impact statement (EIS), rather than an EA, is appropriate for this proposed project. While the Commission routinely prepares an EIS for new LNG import terminals, where site selection and

[34] See 49 CFR Part 193.

alternative sites are focal issues, an EA is normally prepared for a proposed expansion within an existing terminal site.[35] Depending on the outcome of the EA, the Commission may decide to prepare an EIS. In this case, we found no cause to prepare an EIS in view of our determination that the proposed expansion is not a major federal action proposed action significantly affecting the quality of the human environment.

63. SACE claims that an EIS was not prepared prior to construction of the original Elba Island terminal in 1973. An EIS was prepared in conjunction with the terminal's initial authorization and was included as part of the Presiding Examiner's Initial Decision issued on May 22, 1972. The Commission's predecessor, the Federal Power Commission (FPC), adopted the Presiding Examiner's environmental statement as supplemented in FPC Opinion No. 622, issued June 28, 1972, authorizing the Elba Island LNG import terminal. The proposed expansion enlarges the terminal's capacity within the footprint of the original project; consequently, as we did in authorizing a prior expansion of these facilities,[36] we find an EA is appropriate in this case.

Federally Listed Species

64. SACE challenges the COE conclusion that the project would not impact the 11 federally listed species in the project area. Jody Lanier similarly questions whether regulatory agencies should rely on data presented by Southern LNG to determine whether endangered species will be harmed, and asserts that data collection should be done by the state and federal agencies designated to oversee threatened and endangered species.

65. The EA finds 12 federally listed species that potentially occur in the project area. However, the COE and the Commission conclude that due to the lack of habitat, seven of these species would not be affected by the construction and operation of this proposal. The EA discusses the potential impacts to the remaining five species, which have potential habitats or known individual occurrences within the project area. The EA concludes that Southern LNG's proposal is not likely to adversely affect the West Indian manatee, northern right whale, shortnose sturgeon, and the loggerhead sea and Kemp's ridley sea turtles.

66. Section 7 of the Endangered Species Act (ESA) allows federal agencies to designate a non-federal representative, such as an applicant – in this case, Southern LNG – to conduct the necessary surveys required when considering a proposed federal action. Section 402.02 of the ESA implementing regulations states that "if a biological assessment is

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[35] See, e.g., CMS Trunkline LNG Company, LLC, 101 FERC ¶ 61,300 (2002).

[36] 96 FERC ¶ 61,083 (2001).

prepared by the designated non-Federal representative, the Federal agency shall furnish guidance and supervision and shall independently review and evaluate the scope and contents of the biological assessment." Section 380.13 of the Commission's regulations requires that all surveys be conducted by qualified biologists (with name and qualifications clearly identified) using U.S. Fish and Wildlife Service (FWS) and/or National Marine Fisheries Service (NMFS) approved survey methodology (380.13). This is standard procedure for many federal agencies, including this Commission. We find Southern LNG conducted the appropriate informal consultations with the FWS and the NMFS, in coordination with the COE and appropriate Commission staff.

67. SACE and Jody Lanier contend that the Commission did not adequately assess impacts to the shortnose sturgeon, a federally listed fish species known to be rare in the project area. We disagree. The COE and Commission staff coordinated their responsibilities for both NEPA and ESA purposes. The sturgeon is known to be rare, and since the LNG terminal is an existing site and past activities have already degraded potential spawning habitat (mostly due to past dredging), we continue to support our determination, as discussed in the EA, that Southern LNG's proposal is not likely to adversely affect the shortnose sturgeon.

68. We note that when the EA was issued, the Commission submitted copies to the appropriate offices of the FWS and the National Oceanic Atmospheric Administration (NOAA) - NMFS, with a cover letter dated February 5, 2003, asking for concurrence with our determinations of effect for both the ESA and the Magnuson-Stevens Fishery Conservation and Management Act, Essential Fish Habitat requirements. To date, we have received comments from the NMFS - Fisheries in St. Petersburg, Florida. In a February 15, 2003 letter, NMFS states that "[b]ased on our review of the EA, NOAA Fisheries finds that it provides an adequate description of project related impacts on resources for which we have stewardship and overview responsibilities. We also concur with the determination that impacts to living marine resources would be sufficiently offset through implementation of the mitigation (marsh creation) plan described in the document."

Safety and Security

69. Southern LNG's Community Information Packet, a part of its outreach program, was filed with the Commission on December 23, 2002 and is therefore part of the public record in this proceeding. Jody Lanier and SACE ask which agencies/authorities review and test Southern LNG's Emergency Response Plan. SACE further questions whether the plan will be properly funded and who will bear such expenses. Southern LNG has filed its emergency plan with numerous agencies and local authorities including the Commission, U.S. Coast Guard, Chatham County Police, Savannah Fire Department, and Chatham County Emergency Management Agency. Local emergency responders visit with Southern LNG to

review safety procedures. The plan establishes emergency coordination and response procedures with existing and funded authorities. These authorities decide how funds are to be used for emergency preparedness. Commission staff have inspected, and will continue to inspect, the LNG terminal on a biennial basis, or more frequently if required. The U.S. Coast Guard also regularly inspects the facility.

Alternatives

70. Jody Lanier and SACE maintain that the EA does not adequately address renewable energy and energy conservation alternatives. Although renewable energy and energy conservation alternatives may help reduce the demand for natural gas, as well as other fuels, renewable energy and conservation could not new meet the existing demand for natural gas. Projections of future natural gas demand identify significant shortfalls in traditional natural gas supplies. Thus, we believe that increased LNG imports will be necessary to bridge the deficiency in supplies. The U.S. Department of Energy - Energy Information Administration concludes in its primary forecasting study, Annual Energy Outlook 2003, that a major consideration for energy markets through 2025 will be the availability of adequate natural gas supplies at competitive prices to meet growth in demand. This study projects growing dependence on major new, large volume natural gas supply projects for both domestic and imported supplies to meet future demand levels, including deepwater offshore wells, new and expanded LNG facilities, the Mackenzie Delta pipeline in Canada, and an Alaskan pipeline that would allow delivery of natural gas to the lower 48 States.

71. Section 1502.14 of the Council on Environmental Quality's (CEQ) NEPA regulations requires examination of all reasonable alternatives to the proposal. CEQ states that reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and use common sense. The emphasis here is "reasonable." An alternative that does not even consider the use of natural gas would not meet the terms of Southern LNG's agreement with Shell. Therefore, an alternative of this nature is not reasonable. An analysis of renewable energy facilities and energy conservation measures that would be required to meet the demand for this project is beyond the scope of the EA; thus, it is not possible to determine whether those initiatives would result in less environmental impact.

Marine Traffic Issues

72. CARCO, Colonial, and the Savannah Maritime Association discuss potential shipping delays due to an increase in LNG ship traffic associated with the project.[37] CARCO contends the EA lacks a full and quantitative/qualitative study of marine traffic and that neither Southern LNG nor the EA examines the dynamics of vessel operations in the port. CARCO urges further study of the impact of the proposed expansion on marine vessel traffic. Colonial expects the proposed expansion to cause serious delays to vessels arriving and departing its facilities. Colonial asserts that the potential economic impacts should be evaluated in a more analytic and comprehensive manner, and requests the Commission postpone acting on Southern LNG's request until such impacts are fully assessed and alternatives are developed to mitigate these impacts.

73. A simulation study of eleven different slip configurations was conducted by MarineSafety International (MSI) to expand operational time windows during various strengths of ebb and flood tidal currents, and to minimize the risk of collision with LNG vessels while moored at the dock. The study of the final slip design was found to both expand the window for docking and undocking operations, and substantially reduce the risk of collision between a docked LNG vessel and a ship transiting the channel. We accept this as indicating that the new slip will provide significant operational and safety benefits for all users of the Savannah River. On May 30, 2002, the U.S. Coast Guard issued a Letter of Recommendation which found the Savannah River to the Elba Island import terminal to be suitable for LNG marine traffic, subject to relocating the primary dock facilities to the proposed slip.

74. We do not believe that there is any need for further study to evaluate the dynamics of vessel operations to derive hypothetical economic effects. The application of models to simulate a series of random events – i.e., arrival/departure times for LNG vessels, arrival/departure times for non-LNG vessels, and channel variables of tide, current, and visibility – yield artificial outcomes that fail to consider the decision making of the U.S. Coast Guard and Savannah Pilots. Both have authority to resolve potential scheduling conflicts, and both are committed to minimizing disruption by the movement of vessels in the channel. As reflected in the comments and this order, each class of vessel has unique

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[37] We note that Peeples Industries, Inc. (Peeples) raised concerns during scoping about the impact of increased LNG traffic. Peeples stated that its Southern Bulk Industries facility was the only private berthing slip for deep draft vessels perpendicular to the Savannah River. This unique characteristic only allows vessels to dock and sail during a flood tide. These issues were addressed in the EA, and Peeples did not comment on the EA.

constraints when operating in the channel. Scheduling that acknowledges the limitations of individual vessels can minimize the disruption to all users. The requirements of the Regulated Navigation Area (RNA)[38] specifically provide that the Captain of the Port may delay an LNG vessel's entry to the RNA to accommodate other commercial traffic. We believe the operation and scheduling of vessel traffic on the Savannah River is properly an issue for the regional authorities, rather than the Commission.

75. CARCO states that LNG vessels currently must arrive at high water slack (no current), and contends that the combination of this water depth requirement and the RNA significantly impacts the ability of other deep-draft vessels to proceed into and out of port. Commission staff discussed this issue with the U.S. Coast Guard, and we find that due to the existing docking arrangement and the draft of LNG vessels, river current during tide changes and depth of water do not have an impact on inbound or outbound LNG vessel transit or docking. However, silting of the Savannah River has affected some areas upstream of Elba Island and the pilots do delay some deep-draft vessels. We note that since the Elba Island terminal reopened, 10 of 12 LNG vessels have docked outside slack tide. As stated previously, river currents were one of the factors that were analyzed and simulated by MSI. The results of the simulations guided the design and orientation of the proposed slip, whereby MSI and Southern LNG maximized the docking/undocking window for the proposed slip.

76. The U.S. Coast Guard does not expect the proposed slip to lengthen or shorten the total time the RNA is in effect. Although the number of LNG vessels may increase, since LNG vessels do not have a priority, the U.S. Coast Guard believes that managing vessel scheduling will minimize the impact, if any, on all waterway users. To the extent that LNG vessels become more frequent, all waterway users will adjust and adapt as needed. As noted, the operation and scheduling of vessel traffic on the Savannah River is properly an issue for regional authorities, not the Commission.

77. Marathon challenges the EA's implied assumption that current navigation requirements, which state that tugs must attach to and escort passing vessels while LNG tankers are moored, will be reduced or removed when the new slip is put in operation. Marathon argues that there is no evidence that these requirements will be modified, eliminated, or waived once the new slip is available. The currently effective RNA requires Southern LNG to provide tug escorts, and Southern LNG now pays the costs for these tug services. CARCO and Colonial are concerned that if the RNA is changed, tug costs that are now the responsibility of Southern LNG could shift to other persons. The EA refers to a statement made by the U.S. Coast Guard Captain of the Port at the

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[38] 33 CFR § 165.756 (2003).

October 1, 2002 public scoping meeting that the "[addition of a slip] would potentially give us the opportunity to either back off of or remove the requirement for tractor tugs to be attached to passing commercial ships." Our conclusions do not rely on the modification of the RNA; any decision to change the RNA requirements would be made by the U.S. Coast Guard.

78. According to the U.S. Coast Guard, pilots separate vessels by 45 minutes when an LNG vessel is docked, as opposed to a 15-minute separation when an LNG vessel is not docked. The U.S. Cost Guard contends that this has not posed significant delays to the passing vessels. Although the passing vessels may have to slow down, the U.S. Coast Guard stated in its temporary final rule, "Regulated Navigation Area: Savannah River, Georgia," published in the Federal Register on October 10, 2001, that "[b]ased on simulations conducted, the additional time needed to make-up was minimal as compared with normal transits and passing at minimum speed. The time required to make-up results in minimal delays because the passing vessel continues its forward movement during this evolution."[39]

79. CARCO requests the Commission require LNG vessel transits to be made only in daylight hours and require LNG vessels to defer to other deep draft vessels as far as order for entry (or exit) from the port. We believe these constraints would increase the potential for conflict with vessel traffic by reducing flexibility for LNG transit times. The scheduling of vessels is under the authority of the U.S. Coast Guard and Savannah Pilots, and we defer to their authority and expertise in managing river traffic.

80. Based on the discussion above and in the EA, we conclude that if constructed or operated in accordance with Southern LNG's application and supplements, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

81. Any state or local permits issued with respect to the expansion facilities described herein and in the application, as supplemented, must be consistent with the conditions of Southern LNG's authorization. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities authorized by this Commission.[40] Southern LNG

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[39] 66 FR 51,562 (2001). See also 67 FR 31,730 (May 10, 2002) (Temporary Final Rule) and 67 FR 46,865 (July 17, 2002) (Final Rule).

[40] See, e.g., Schneidewind v. ANR Pipeline Company, 485 U.S. 293 (1988); National Fuel Gas Supply v. Public Service Commission, 894 F.2d 571 (2d Cir. 1990); and Iroquois

(continued...)

shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Southern LNG. Southern LNG shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

82. At a hearing held on April 9, 2003, the Commission, on its own motion, received and made a part of the record, all evidence, including the application, as supplemented, and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

The Commission orders:

(A) Southern LNG is granted authorization, pursuant to NGA Section 3, to expand its Elba Island facilities by constructing, owning, operating, and maintaining natural gas facilities, as described and conditioned herein, and as more fully described in the application.

(B) The Ordering Paragraph (A) authorization is conditioned on the following:

(1) Southern LNG's constructing and making available for service the facilities described herein within three years of this final order;

(2) Southern LNG's compliance with all regulations under the NGA including, but not limited to, Parts 154 and 284, and Paragraphs(a), (c), (e), and (f) of Section 157.20 of the Commission's regulations;

(3) Southern LNG's executing a contract for the level of service and for the terms of service represented in the precedent agreement with Shell prior to commencing construction, and;

(4) Southern LNG's compliance with the specific environmental conditions listed in the appendix to this order.

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[40](...continued)
Gas Transmission System, L.P., 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(C) Southern LNG's request for preapproval of rolled-in rate treatment is granted, absent a material change in circumstances at the time Southern LNG makes its next NGA Section 4 rate filing.

(D) Southern LNG shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Southern LNG. Southern LNG shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(E) Southern LNG's request for rehearing is granted, for the reasons discussed in the body of this order.

(F) Marathon's request for rehearing is denied, for the reasons discussed in the body of this order.

(G) Marathon's request for clarification is granted, for the reasons discussed in the body of this order.

(H) The Point Fortin LNG Exports Ltd. and BG LNG Train 3 Ltd. protest is denied, for the reasons discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX

Environmental Conditions
Southern LNG's Elba Island Expansion Project
Docket Nos. CP02-379-000, CP02-379-001, CP02-380-000, and CP02-380-001

1. Southern LNG shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment, unless modified by this order. Southern LNG must:

   a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);

   b. justify each modification relative to site specific conditions;

   c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and

   d. receive approval in writing from the Director of the Office of Energy Project (OEP) **before using that modification.**

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the proposed expansion shall allow:

   a. the modification of conditions of this order, and

   b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental impact resulting from project construction and operation.

3. **Prior to any construction,** Southern LNG shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will inform of the Chief Inspector's environmental authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. Southern LNG must receive written authorization from the Director of OEP **before commencing expansion construction**. Such authorization will only be granted following a determination that all pre-construction conditions have been satisfied.

5. Southern LNG must receive written authorization from the Director of OEP **before commencing expansion service**. Such authorization will be required prior to initiation of LNG import activities associated with the Elba Island terminal. A separate authorization for initial use of the new LNG storage tank will be required and will only be granted following a determination that rehabilitation and restoration of the facility site is proceeding satisfactorily.

6. **Within 30 days of placing the proposed expansion facilities in service,** Southern LNG shall file an affirmative statement with the Secretary, certified by a senior company official:

   a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or

   b. identifying which of the certificate conditions Southern LNG has complied with or will comply with. This statement shall also identify any areas where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

7. **Prior to construction**, Southern LNG shall file with the Secretary, its site-specific Soil Erosion and Sediment Control Plan and the county and state approvals.

8. Southern LNG shall file a noise survey with the Secretary **no later than 60 days** after placing the expansion facilities in service. If the noise attributable to the operation of the expansion facilities exceeds a day-night sound level of 55 decibels of the A-weighted scale at any nearby noise sensitive areas, Southern LNG shall file a report on what changes are needed and shall install additional noise controls to meet the level **within one year** of the in-service date. Southern LNG shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

9. New, modified, and replacement facilities associated with the proposed expansion project shall comply with the 2001 Edition of NFPA 59A, except where the 1996 Edition is more stringent.

10. If the temperature of any region of any storage tank outer containment vessel becomes less than the minimum design operating temperature for the material (specified for the new tank as -5° F), Southern LNG shall notify the Commission on a timely basis, specifying procedures for corrective action.

11. A foundation elevation survey for the proposed LNG tank shall be made on an annual basis, at the same time as the surveys for the existing tanks.

12. Southern LNG shall ensure that all hazard detectors are installed with redundancy and/or fault detection and fault alarm monitoring in all potentially hazardous areas and/or enclosures.

13. Southern LNG shall develop procedures for offsite contractors responsibilities, restrictions, limitations, and supervision of offsite personnel by Southern LNG staff. Southern LNG shall define staff responsibilities and assurance of appropriate deactivation and activation of safety systems to accommodate construction.

14. Operation and Maintenance procedures and manuals, as well as emergency plans and safety procedure manuals, shall be filed with the Commission **prior to commissioning operations** of the expansion facilities.

15. Southern LNG shall notify Commission staff of any proposed revisions to the security plan and physical security of the facility **prior to commissioning** the proposed expansion facilities.

16. Southern LNG shall submit monthly progress reports to the Commission, describing activities undertaken, problems encountered, and remedial actions. Problems of significant magnitude shall be reported to the Commission on a timely basis.

17. Site inspections and additional technical reviews will be held by Commission staff **prior to commencement of operation** of the expansion facilities.

18. The facility shall continue to be subject to regular Commission staff technical reviews and site inspections on a biennial basis, or more frequently, as circumstances indicate. Prior to each Commission staff technical review and site inspection, Southern LNG shall respond to a specific data request that to include information relating to possible design and operating conditions that may have been imposed by other agencies or organizations, up-to-date detailed piping and instrumentation diagrams reflecting facility modifications, and other pertinent information not included in the semi-annual reports described below, including

facility events that have taken place since the previously submitted semi-annual report.

19. Semi-annual operational reports shall continue to be filed with the Commission to identify changes in facility design and operating conditions, abnormal operating experiences, activities (including ship arrivals, quantity and composition of imported LNG, vaporization quantities, boil-off/flash gas, etc.), and plant modifications, including future plans and progress thereof. Abnormalities shall include, but not be limited to: unloading/shipping problems, potential hazardous conditions from offsite vessels, storage tank stratification or rollover, geysering, storage tank pressure excursions, cold spots on the storage tanks, storage tank vibrations and/or vibrations in associated cryogenic piping, storage tank settlement, significant equipment or instrumentation malfunctions or failures, unscheduled maintenance or repair (and reasons therefor), relative movement of storage tank inner vessels, vapor or liquid releases, fires involving natural gas and/or from other sources, negative pressure (vacuum) within a storage tank, and higher than predicted boiloff rates. Adverse weather conditions and the effect on the facility also shall be reported. Reports shall be submitted within 45 days after each period ending June 30 and December 31.

In addition to the above items, a section entitled "Significant plant modifications proposed for the next 12 months (dates)" also shall be included in the semi-annual operational reports. Such information would provide Commission staff with early notice of anticipated future construction/maintenance projects at the LNG plant.